

2008-59
BEFORE THE
Federal Communications Commission
WASHINGTON, D.C. 20554

ORIGINAL

In the Matter of)
)
Review of the Pioneer's Preference Rules) ET Docket No. 93-266
To: The Commission

MAY 24 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**OPPOSITION OF TRW INC. TO CELSAT, INC.
PETITION FOR RECONSIDERATION OR REQUEST FOR CLARIFICATION**

TRW Inc. ("TRW"), by its attorneys and pursuant to the Section 1.429(f) of the Commission's rules and Public Notice Report No. 2008, 59 Fed. Reg. 23858 (May 9, 1994), hereby opposes CELSAT, Inc.'s ("Celsat") "Petition for Reconsideration or, in the Alternative, Request for Clarification" of the Commission's First Report and Order in the above-captioned proceeding. See Review of the Pioneer's Preference Rules, 9 FCC Rcd 605 (1994) ("First R&O"). In its Petition, Celsat, long a would-be applicant for authority to establish a "hybrid" mobile-satellite service ("MSS") and terrestrial system in the 1610-1626.5 and 2483.5-2500 MHz bands (the "MSS/RDSS" bands), contends that the Commission, in its rulemaking proceeding in ET Docket No. 92-28, never ruled on Celsat's request for a pioneer's preference. See Celsat Petition at 1. Celsat "assumes" that its request for pioneer's preference remains pending, and that when acted upon, the Commission will consider the request pursuant to the existing pioneer's preference rules -- as specified for the pioneer's preference requests in ET Docket No. 92-28 in the First R&O. Id. at 1-2. Celsat asks the Commission to clarify its understanding of the First R&O or to reconsider its decision accordingly.

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TRW opposes both Celsat's request for clarification/reconsideration, and the outlandish, self-aggrandizing claims Celsat makes in support of its petition. First of all, it is TRW's view that Celsat is not entitled to have its request for pioneer's preference^{1/} considered by the Commission. In its Notice of Proposed Rule Making and Tentative Decision in ET Docket 92-28,^{2/} the Commission dismissed Celsat's underlying petition for rulemaking in the MSS/RDSS bands -- which were the exclusive focus of the spectrum allocation rulemaking proceeding in ET Docket No. 92-28. See ET 92-28 NPRM, 7 FCC Rcd at 6416 n.15. That dismissal was finalized in the Commission's recent Report and Order in ET Docket No. 92-28, and Celsat did not seek review of the Commission's determination.^{3/}

^{1/} See CELSAT, Inc. Request for a Pioneer's Preference Regarding its Petition for Rulemaking to Allocate Spectrum and to Establish Rules and Policies for a New Hybrid Personal Communications Network Service, File No. PP-28 (filed February 10, 1992), as amended.

^{2/} See Amendment of Section 2.106 of the Commission's Rules to Allocate the 1610-1626.5 MHz and the 2483.5-2500 MHz Bands for Use by the Mobile-Satellite Service, Including Non-geostationary Satellites, 7 FCC Rcd 6414 (1992) ("ET 92-28 NPRM").

^{3/} See Amendment of Section 2.106 of the Commission's Rules to Allocate the 1610-1626.5 MHz and the 2483.5-2500 MHz Bands for Use by the Mobile-Satellite Service, Including Non-geostationary Satellites, 9 FCC Rcd 536, 543 (¶¶36-37) & nn.41-42 (1994) (Commission dismisses Celsat petition for reconsideration of ET 92-28 NPRM as nonfinal; notes that CELSAT is barred from applying for MSS/RDSS bands in any event by passage of June 1991 cut-off deadline).

Under Section 1.402(a) of the Commission's rules, a "preference will be granted only if rules, as adopted, are a reasonable outgrowth of the proposal and lend themselves to the grant of a preference." See 47 C.F.R. § 1.402(a). Here, with the finalization of the dismissal of Celsat's rulemaking proposal, and the allocation of spectrum for a service concept starkly different than the one for which Celsat sought a preference, the grant of a preference to Celsat would violate Section 1.402(a) of the very rules Celsat is seeking to have applied. Its request is legally incapable of grant, and therefore is not entitled to future Commission consideration -- at least not in a favorable light.

Though the matter is rendered moot by the fact that Celsat's pioneer's preference request for the MSS/RDSS bands is not grantable as a matter of law, TRW must still object for the record to Celsat's shameless placement of its service concept onto a pedestal and its related assertion that all of the real MSS/RDSS applicants -- who count among their number such industry leaders and corporate stalwarts as TRW, and subsidiaries of Motorola, Inc. and Loral Aerospace Corporation -- immediately recognized the absolute wisdom of the Celsat approach and revised their own proposals accordingly. See, e.g., Celsat Petition at 5 ("every other candidate in ET Docket No. 92-28 redesigned its system to reflect the key features of the CELSAT . . . design . . . to increase their respective capacities and enhance their ability to share the MSS/RDSS spectrum with CELSAT and each other"). Celsat also claims that its participation on the MSS Above 1 GHz Negotiated Rulemaking

Committee convened last year in CC Docket No. 92-166 led it to make "very generous and significant disclosures" that the real applicants are now "incorporating" into their own systems. Id. at 4-5.

That Celsat was permitted to participate in the negotiated rulemaking proceeding -- over the objection of nearly all of the bona fide applicants -- unfortunately is true. However, its assertions as to the substance and utility of its "contributions" there, and its contentions that it has been prejudiced by its perception that the applicants are now employing lessons "learned from [Celsat's] teachings" into their own system designs is, in a word, ludicrous.^{4/}

Celsat contemplated and based its participation in the Commission's negotiated rulemaking proceeding in ET Docket No. 92-166 on a theoretical domestic geostationary/terrestrial cellular scheme for access to the MSS/RDSS bands, while the applicants were discussing how to resolve spectrum sharing issues presented by their global nongeostationary space-segment-only proposals for the use of the band.^{5/} Indeed, after it filed its Petition in this proceeding, Celsat finally filed a satellite

^{4/} TRW, for one, has not redesigned its system or otherwise attempted to ape Celsat's design approach.

^{5/} The only applicant for a geostationary satellite system in the MSS/RDSS bands envisioned using the bands as an adjunct to its authorized upper L-band MSS system -- and proposed a scheme that looks nothing like the one sketched out by Celsat.

system application^{6/} -- for frequency bands other than the MSS/RDSS bands that were the subject of its pioneer's preference request and the proceeding the Commission authorized completion of in its First R&O in this proceeding.^{7/} Notably, Celsat did not file comments in response to the Commission's Notice of Proposed Rule Making in ET Docket No. 92-166 -- where the Commission proposes service and licensing rules for the nongeostationary satellite systems that will operate in the MSS RDSS bands.

In short, because Celsat has no rulemaking proposal for spectrum allocation in the MSS/RDSS bands pending before the Commission, and because Celsat is legally barred from applying for any satellite system to operate in the MSS/RDSS bands, it lacks standing to have a pioneer's preference for the MSS/RDSS bands considered by the Commission -- whether under the existing rules or whatever modifications thereto may emanate from this proceeding. The Commission should

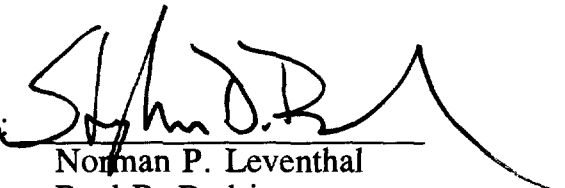
^{6/} See Application of CELSAT, Inc. for authority to construct satellite system in the 1970-1990 MHz and 2160-2180 MHz bands, File No. _____ (filed April 8, 1994).

^{7/} To the extent that Celsat appears to suggest that the Commission could, under its current pioneer's preference rules, grant Celsat's preference request in ET Docket No. 92-28 and apply that preference in connection with Celsat's new (and as-yet unaccepted for filing) application for a 2 GHz satellite system, see Celsat Petition at 6 n.12, such an action would contravene the proscription contained in the final sentence of Section 1.402(a). See supra. Any Celsat pioneer's preference request for its proposed 2 GHz system would have to be filed anew -- and presumably under the rules as may be modified in this proceeding; the bootstrapping so glibly suggested by Celsat simply is not permissible.

deny Celsat's petition, and take the housecleaning step of formally dismissing Celsat's pioneer's preference request for the MSS/RDSS bands in conjunction with its forthcoming final order on the applicants' pioneer's preference requests in ET Docket No. 92-28.

Respectfully submitted,

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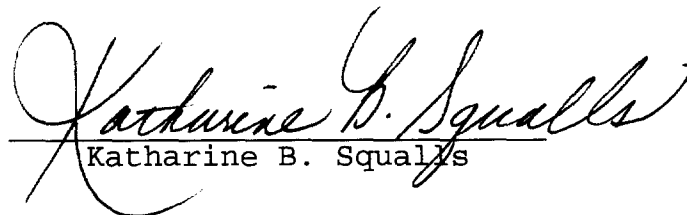
May 24, 1994

Its Attorneys

CERTIFICATE OF SERVICE

I, Katharine B. Squalls, do hereby certify that a copy of the foregoing "Opposition of TRW Inc. to CELSAT, Inc. Petition for Reconsideration or Request for Clarification" was mailed by United States mail, first-class postage prepaid, this 24th day of May 1994, to the following:

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